

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – NOVEMBER 5, 2003**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 5:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Chang, Sellers, Tate, and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**1. WORKSHOP ON FINANCING, SCOPE, AND SCHEDULE FOR “REMAINING PUBLIC FACILITIES PROJECTS”**

City Manager/Executive Director Tewes presented the staff report, indicating that this workshop arose from the Council/Redevelopment Agency's goal setting retreat held approximately one year ago. The goal stipulates that following the round two decision on the State library bond application, a workshop is to be scheduled to review priorities, locations and funding for all remaining municipal buildings. He indicated that staff has provided the Council/Agency information that identifies all of the remaining municipal buildings. He stated that the City was not successful in the round two library bond application. Therefore, this remains a problem the City needs to work on. He identified the projects that the City has identified that might be undertaken in order of scheduled completion dates as follows:

- 1) regional soccer complex - \$1 million of RDA funds has been set aside to assist in the construction of a new regional soccer complex. He indicated that the City of San Jose is conducting an environmental impact report adjacent to the Sobrato high school. This project could be opened as early as January 2005.
- 2) Library – a \$21.1 million project; \$5.4 of RDA set aside funds with a possible opening in 2006 or later. The opening of the library is dependent on the decisions to be made by the Council/Agency this evening or at subsequent meetings on how it would like to proceed with the library project.
- 3) Development of the outdoor soccer complex – RDA has already acquired the land on Condit Road, north of the aquatics center. \$2.7 million has been allocated from the Park Development Fund and a new development impact fee that will pay for this project. No funds are to come from the RDA.
- 4) Expansion of the El Toro Youth Center on Crest Avenue. \$1.3 million has been allocated from the City's budget, none from RDA funds. This project could be constructed in 2006 or later.

5) The third municipal fire station. The Fire Master Plan calls for a site that is located within the central part of the community. The City has identified a site just south of the transit center, south of the Caltrain parking lot. The City is in the process of acquiring this land from VTA. The decision to build this facility depends on when the City's budget can absorb the additional operating cost of a new fire company. The fire station would be financed from Development Impact Fees and no RDA funds.

6) Expansion and modernization of City Hall. He indicated that it had been planned, with the construction of a new 40,000 square foot library to the west that the existing library building could be made available for expansion and modernization of city hall. Perhaps, some time in the future, the construction of new council chambers in the area between city hall and the library can occur. Target day would be 2007 or later. Financing would not come from RDA funds. He said that the City's five year financial forecast for the general fund does not include the cost to support the debt for the expansion of City Hall.

7) Expansion and relocation of the City's corporation yard. He felt that it would be appropriate to consider expanding and relocating this facility because it is too small. The Council has also expressed a desire to incorporate the 1.8 acre corporation yard site into the community park master plan. He said that relocation would cost approximately \$5.5 – \$7.6 million in current dollars with a projected date of 2008 or beyond attributed to the fact that the School District has a lease for the school bus yard through July 2006 with the opportunity to extend for one year to July 2007. This project would be financed with debt to be paid by the user departments.

Council/Agency Member Tate provided additional background regarding the library bond application. He stated that today, he sent the Council, through the City Manager/Executive Director, the evaluation conducted by the State as well as an analysis prepared by Sarah Flowers. He stated that when the Council/Agency goes through the scoring, it will find that the City did not improve its score and that it has a long way to improve its score in the third round, noting that the City only has two months to do so. He stated that City and library staff will be spending time with evaluators on Friday because it is not understood why the City did not score higher as the City proceeded in the direction that the State evaluators recommended for application improvement. He said that staff will be discussing the evaluation with the Library Commission on Monday night. He recommended that the City proceed with an application with the assumption that the City will not be successful in the competition.

Mayor/Chairman Kennedy referred to page 3 of the staff report, indicating that this page separates all City projects into two categories. The first four projects are ones that are completed or substantially underway: 1) Community and Cultural Center (completed), 2) aquatics complex (well underway with an opening expected in May 2004), 3) Police station (underway with a completion date expected in June 2004), and 4) the indoor recreation center (under design with an expected completion date of early 2006). He indicated that the second category of projects that have not yet begun or are in the early stages of development are: 1) the library, 2) the outdoor sports complex, 3) the regional soccer complex at the Sobrato high school site, 4) expansion of the El Toro Youth Center, 5) relocation/expansion of the corporation yard, 6) expansion and modernization of City Hall, and 7) the fire station. He stated that he took these projects and created an "A" and "B" list. His A list includes the first four projects and added the library as an "A prime" project because it is a special case because of the unique bonding situation.

He also listed the regional soccer complex on the A list as it can move forward. The remainder of the projects were placed on a “B” list. He listed three options for the library: 1) wait until January 2004 to see what happens with the third round competition; 2) split the project into phases, proceeding with Phase I immediately and reduce the scope of the application; and 3) look at the library and build a smaller facility with the potential for expansion. He said that he would favor proceeding with the library but at a reduced or phased level with plans to expand through a local bond measure or the extension to the redevelopment agency to complete the remainder of the project. He said that the “A” list consists of projects which the City needs to stay the course so as not to delay the completion of the projects. He felt that these projects need to be delivered within a reasonable schedule that is expected by the public. He indicted that the “B” list are projects that may need additional sources of funding or may require operating cost that have not been identified such as the fire station. He felt that the City will know more a year from now with respect to the economic situation. He said that the City needs to be careful not to commit itself to additional projects that would impact the general fund. He stated that the City is dipping significantly into the general fund reserves, noting that the reserves were set aside for times of economic uncertainty. He felt that it was prudent to do so, but that the City should not be placed at risk so that it uses all of the reserves with no foreseeable economic up turn or some assurance that the City will be able to build up its revenue base.

Council/Agency Member Tate agreed that the library belongs on the A+ list. He felt that there are several options that the City can look at in terms of phasing the library. If the City is to build the library on its own, there are items that the City can cut from the library and phase them in later. He strongly supported the IRC because he felt that this facility would be the vehicle the City would have that would support the needs of the youth and seniors of the community. However, the youth and seniors in the community are telling the Council that the IRC does not meet their needs, noting that this is a \$26 million project. He was not suggesting that the Council replace the IRC with the library because he agreed that there is a way to proceed slower on the library, involving less money. Should the City decide to proceed with the first phase of the library, the Council would need to take funding from somewhere. He did not believe that the City should proceed with the IRC until the scope can be improved for youth.

Council/Agency Member Sellers said that the list was helpful in discerning which projects are underway and those that have not yet begun. He supported continuing with the projects underway as it would be a significant loss of income that the City would sustain if it was to stop mid project. He stated that the compelling reason to continue with the projects is that there is a need for the facilities, noting that the City has an inadequate senior facility and virtually no youth center. He felt that the City needs to keep the momentum going. He noted that the City is not duplicating or expanding existing facilities. These are projects that were developed over a five-year period of time through community input, starting with the Visioning process. He recommended that the City continue with the four projects. He concurred that the library needs to be at the top of the priority list. He stated that the Council proceeded with what made sense in terms of the location and development of the library. He indicated that the site for the library was chosen because it was a site that made sense for the City, it is centrally located, and that it was believed that it would be significant for the City’s chances for bond funds. He noted that the City has not been awarded bond funds and that it may make sense to resubmit for the third round of bond funding. He felt that the Council/Agency needs to look at different options for the library. He noted that Council/Agency Member Carr has talked about partnering with the School District in looking at

options that includes the use of some of their facilities. He recommended that the City explore this option, starting discussions with the library commission and the City-School Liaison Committee. He recommended that a library subcommittee be formed to focus on the library as has been done with the IRC and aquatics projects. The library subcommittee could seek ways to expedite the development of the library, understanding that the City may or may not receive bond bonds. Also, reconsider the scope and location of the library project. He felt that there may be ways to save money with phasing or reducing the scope of the project to help expedite the project. He noted that the City has a library but that there is a need for a larger facility. If there is a way for the City to retool the library and keep it moving, it would make sense to do so. He noted that Morgan Hill residents voted for the bond fund and felt that the City was entitled to its share of these funds. He felt that the City should continue looking at these funds. If the City is able to expedite the construction of the library, it should, but not at the expense of the A projects. He felt that the funds for the regional soccer complex need to be reconsidered. While this project will bring benefit to the community, he felt that there were ways to get this project underway without the use of RDA funds.

Council/Agency Member Carr felt that the location of the library and the location of other facilities should be placed on the table as conversation points to investigate the feasibility of lowering costs and finding ways to generate new revenue from other properties that the City has today for some of these facilities. He appreciated the fact that Mayor/Chairman Kennedy ranked the projects. He agreed that the library needs to be ranked at the top in terms of priority. He felt that the IRC needs to be placed on the table so that it can be considered and reviewed in terms of its size and scope, or whether there were other ways of providing these services. He stated that he was not comfortable stating that dollars have been dedicated to a regional soccer complex. He felt that the Council/Agency should be thinking about these funds in a different way and how they can be used more directly within the city limits of Morgan Hill. The community and cultural center is ranked high because it is completed. He stated that he would not support any effort to stop a project that is mid way completed such as the aquatics complex, but felt that the other projects that have not commenced construction would be reviewed. He said that this may be the time to start talking about a new community visioning process as there are a lot of projects the City and citizens would like to complete. He recommended that the dialogue about a new community visioning process commence. He noted that Council/Agency Member Tate has been actively involved in the library grant process. Therefore, he would follow his recommendation on the bond application as it has been confirmed that it would be difficult for the City to improve its library application in the next couple of months.

Mayor Pro Tempore/Vice-chair Chang stated that the library is high on her list but that she did not know how this would be accomplished.

Mayor/Chairman Kennedy opened the floor to public comment.

Jeanne Gregg, Library Commissioner, speaking as a private citizen, stated that everyone is disappointed with the results of the library bond issue. She agreed with Council/Agency Member Tate that the City needs to look elsewhere for funding. She indicated that she participated in the Visioning process, noting that the library was high in priority and may have been ranked as the number one project. When other projects were decided upon, it was with the assumption that the library would be built with library bond

money. She stated that it was not realistic to state that a recreational facility has as high a priority as the library. She indicated that the community has to come up with funding to build a library facility to be operated by the Joint Powers Authority. Therefore, there would not be an impact on the City's budget that can be expected with other facilities. She indicated that she has spoken to individuals from the newspaper and other members in the community about a bond measure to pay for the library. She felt that it would be difficult to sell a bond measure to the community based on the fact that the City has built recreational facilities. Community members may state that the City should build the library with the current RDA funding as they may not be interested in supporting a bond issue for more public buildings. She stated that she would support a bond measure for a library but that she was concerned that in passing a bond measure for something as popular as the library would not be an easy thing to do. She said that she was proud of the way Morgan Hill has developed over the past 10-years and recommended that the Council continue with the vision into the future.

Carol O'Hare indicated that she is co-president of the Morgan Hill branch of the American Association of University Women, past president of the Friends of the Library, served on the library site committee, is actively involved with the library, and is working on the book sales that help raise money for the library. She indicated that she also works at Booksmart, a local book store. She stated that she is passionate about the fact that a new library is needed in Morgan Hill, one worthy of this community. She indicated that the issue is how the new library would be paid for. She said that the grant application has made it clear as to the City's needs and how to proceed. She noted that two attempts for state funding have not worked; therefore, funding has fallen back to the City. She urged the Agency Board to use available RDA funds to build the larger library needed by the community. She understands that this would place a hold on the construction of the IRC, waiting for additional RDA funds to become available. She noted that a new library would cost less than the IRC, even in a scaled back version, serving more community members. It would also send an important message to Morgan Hill citizens that the Council and Agency Board values books, reading, education and life long learning as much as she does.

Barbara Palmer, a 28-year resident and retired teacher, stated that funding for education is seriously decreasing and will continue to decrease over the next few years. She said that most of the school libraries lack the variety and number of books and magazines that children need as does the current library. The City needs to foster literacy in this community and the joy of reading for pleasure and knowledge. It was her hope that the Council/Agency Board would place the library at the top of the priority list.

Sarah Flowers, Santa Clara County Deputy Librarian and a former community librarian, stated that she was speaking as a citizen of Morgan Hill. She indicated that she and her husband voted for the RDA extension a few years ago for one reason; the fact that the library was listed on the ballot language and in all of the campaign materials as one of the projects that would be funded. She stated that citizens come up to her asking when the construction for the new library will begin. When she tells them that the City is waiting for money, they express surprise as they thought that redevelopment would pay for it. If the City waits and ask for another extension to the RDA in order to pay for a library or go out for a bond act, the City would get a reaction from individuals who think that they have already told the Council/Agency Board that the library was a high priority. She felt that building a new library makes sense for the RDA

because unlike the other projects under discussion, the City does not have to worry about operations and maintenance. It would also freeze up the current library facility to use as an expansion for City Hall. She stated that a library benefits the entire community. She did not believe that any other project being considered by the Council/Agency Board would have this level of activity. She felt that the Council/Agency Board can be the latest visionaries, using RDA monies, to build a state of the art library facility that would serve the 21<sup>st</sup> century population of Morgan Hill.

Chuck Dillmann, Library Commissioner speaking as a resident, stated that the library site was selected based on two reasons: public outcry from individuals wanting to leave their children there after school; and 2) concern for purchasing land for the library. Another factor in the site selection was the fact that this was the only land that the City controlled and could guarantee delivery of a library. He felt that it was time to conduct out of the box thinking. He felt that everyone agrees that a better library is needed. He recommended that the City purchase an existing building, noting that there are two existing buildings that are of a suitable size. However, they are located north of town near Cochrane Road. An alternative to locating the building closer to town is to switch it with the police station and use the planned police station as it is a suitable size for the library. He said that these buildings can be purchased for less than it would cost to build a new library. In addition, it can assure an earlier library. He felt that the City was naïve to have gone into the second grant application and that the City would be wasting its time with the third grant application because the City is too affluent. Also, library staff is doing too good of a job of operating the current facility and that other cities are needier than the City of Morgan Hill. He did not recommend reducing the size of the library facility as the size projected would not match the population that Measure P would produce. He said that there is property on the market that can be acquired under \$1 million and that the City can solve urban blight by moving city hall to another building. Doing so would help solve some of the vacant space that is on the market; helping the economy of Morgan Hill. He said that the multi purpose buildings can be sold in the future, at a good price, and that the City can then build a custom facility. No matter what the Council/Agency Board does, there is a track record of not meeting costs. Before the City proceeds much further, he felt that a task force should be put together to figure out how to bring projects in on time and under budget.

Ralph Lyle felt that the comments expressed this evening by the Council/Agency Board and citizens have been excellent. He said that the City has a public safety exposure and is in need of a new fire station. He agreed that the City needs to step back and look at other solutions for a new library. He said that he has always been troubled with the Peak/Alkire location as he did not believe that it was centrally located to the community. He said that the library, as opposed to the other facilities listed, would have less impact on the general fund through time. He inquired whether the IRC could be designed/built as a core facility with expansion capabilities to take place at a later date. He stated that he has always been surprised that the IRC would include a swimming pool as the City is constructing several other swimming pools. He inquired how the swimming pool at the IRC would affect the cost recovery of the aquatics complex. He would consider conceding the IRC swimming pool and restoring other programming activities as swimming pools can loose money. He stated that he was in support of the library and moving full speed ahead. He said that the alternative of using an existing building may be a solution.

Phyllis McLaughlin, recently retired children's librarian, addressed the issue of fairness. She stated that the RDA has been in effect since 1982. During this time, millions of dollars have been taken away from the Santa Clara County Library and given to the RDA to build worthy projects. She indicated that one of the reasons she did not vote for the extension of the RDA was the fact that the library lost money to the RDA the last several times it was placed on the ballot. As it was voted that the RDA would be extended and the citizens of Morgan Hill have voiced an opinion that they would like to have a larger/better library, she felt that it would only be fair that some of the money taken from the library over the years be used to build the library. She felt that the library deserves to have some of the monies paid back to it in a new library that would benefit the entire community.

Council/Agency Member Tate felt that the City needs to explore how it can get the public's opinion in terms of how the City should proceed with the projects. He felt that there is disagreement among the Council/Agency Board in terms of priorities between recreation and a new library. He felt that the City could conduct a survey/poll in the short term to assist the Council/Agency Board move forward. He was trying to find a way to get a sense of the public sector's priorities. He stated that the speakers shared his passion for a library but felt that the City needs the entire community's input.

Council/Agency Member Sellers felt that part of the consideration should be what will be done with the city hall facility. He felt that it was imperative that the City go back and look at a broader range of options, particularly focusing on the library and making it the initial focus; figuring out how it can use the funding in place and finding other funding sources. He noted that the Redevelopment Agency has set aside \$5.4 million for the library and felt that there may be other funds available within the RDA. He felt that a false choice was laid out in the newspaper and by other individuals to state that it is an either or situation for recreational facilities or a library. During the Visioning process, the public stated that they wanted a library and that he was determined that the City should provide a new library facility as soon as possible. The Council/Agency Board has always stated that both recreational facilities and a new library would be constructed. He noted that the City does not have recreational facilities and that a library was needed as the current one is inadequate. He recommended that the City consider the options identified such as looking at school facilities or finding ways to partner with the School District. He felt that Mr. Dillmann offered creative and thought provoking alternatives. He inquired if there was a downside to submitting a third State library bond application. He indicated that the Council met with a State legislator last week who mentioned that there may be other funding sources that State legislators were considering to expand and continue RDA funding. He stated that he was not willing to sit and wait until January 2004 and not proceed with other options. He felt that it would be a slim chance that the City would receive funding as quickly as it would like given what is taking place in Sacramento.

Mayor Pro Tempore/Vice-chair Chang noted that \$5.4 million of RDA funds have been reserved for the library. She inquired what the \$5.4 million would provide in terms of a library expansion. She recollected that the \$5.4 million could be used to add an additional 14,000 square foot library expansion should the City not be successful in its library bond application.

Council/Agency Member Tate said that the \$5.4 million was the City match required for funding. He said that the Council/Agency Board stated that it would use this money to expand the existing facility but that no work was done to determine the cost for expansion. This amount was a guess as to the

amount of funding needed for expansion. He did not believe that there was a downside to proceed with a third library bond application. He did not believe that the IRC was meeting the needs of youths and seniors based on his discussions with them. He felt that the City needs to find ways to meet the needs of these groups and that a lot can be done to meet these needs with an outdoor sports complex. He felt that this can be incorporated into the study. He said that he would place the outdoor fields in the “A” category as it would address the needs of the community for recreation.

Mayor/Chairman Kennedy noted that there are \$7.4 million of funds available for the library over time. He felt that with proper evaluation, the City can find a way to build a more cost effective library. It may be that the library could be designed somewhat smaller but designed with capabilities for expansion in the future once additional funding is found. If the City were to relocate the corporation yard, build a library on this site, and then sell the site, the net benefit would be making money in this process. Perhaps a site on the Britton campus may be an alternative. He felt that the City needs to look at creative ways for making this work with the existing resources, sites and spaces that may be available. He noted that Council/Agency Member Sellers suggested that a Council subcommittee be created to work on this issue. He stated that the library commission needs to be a primary source to work with as well. He suggested that the Council put together a committee composed of a few Council members, working with the Library Commission, to evaluate options to make the library and IRC work, sooner rather than later, so that both projects can proceed without pitting the library advocates against the recreation advocates.

City Manager/Executive Director Tewes informed the Council/Agency Board that the \$21.1 million includes acquisition of the site. He said that page 5 identifies sources of funding for the \$21.1 million. He said that \$400,000 has already been spent on the design of the library.

Council/Agency Member Carr stated his support for the creation of a council library subcommittee. He said that the Agency needs to continue to look at the RDA and the RDA dollars, noting that priorities and funding changes with time. He did not know if the City would have proceeded differently with the library had it not been for the bond application. He said that the issue of the IRC is one that needs to be addressed. He stated that he was convinced that the IRC’s main function should be senior and youth services. The City needs to determine how the City can best provide expanded and improved youth and senior services. It may be found that the intergenerational IRC may not be the best way to meet these needs based on the dollars available and the needs the City has across the community. He felt that this needs to be examined. He noted that staff conducted focus group meetings with the senior and youth advisory committees. He stated that the City needs to open up discussions so that it is not just talking about the foot print and location that the Council/Agency Board has been talking about. He said discussion may be about expanding services in other ways using current assets. He felt that the discussion relating to the IRC needs to be reopened.

Mayor Pro Tempore/Vice-chair Chang stated that \$7.7 million has been reserved for flood control and \$5 million for economic development, equating to approximately \$12 million. She noted that this is the amount of funds needed for the library. She inquired why funding for these two projects were not included as a funding source. She did not know if she would support changing the scope of the IRC as it has been discussed for approximately 2-3 years. She indicated that the IRC indoor swimming pool has been designed to be used by senior citizens. She stated that the Council/Agency Board has focused on

the cost recovery for this project. She recommended that flood control and economic development funding be used for the library.

Council/Agency Member Sellers stated that there were significant flood control and economic development needs. He would like to take a look at opportunities for private partnerships within some of the facilities. He noted that the City is in the process of building facilities such as the indoor recreation center and that the City needs to continue this process as too much time, energy and money has been spent on this project to stop at this time. He felt that there may be opportunities for such things as the gymnasium where the City can enter into long term commitments that should be pursued. This may allow for some funds to be freed up for other projects.

Mayor/Chairman Kennedy noted that there are other funding sources not yet discussed that have been successful in many other communities such as fundraising efforts. He indicated that Council/Agency Member Tate mentioned that the Castroville project was successful as that community was able to raise \$1.3 million. He said that there is an interest on the part of many benefactors and those who have done well in the community to give back to the community. Therefore, this is an option that has not been looked at and needs to be explored. He noted that the aquatics group has raised funds to help operate the aquatics center and the Community Foundation is raising funds to assist other facilities. He felt that it was time for the City to look to individual donors to help with the library funding. He noted that the Council/Agency has a subcommittee that is working on the indoor recreation center. He recommended that they be asked to look at the broader picture and determine whether the indoor recreation center is truly going to meet the needs of youths and seniors and whether there are other funding alternatives that would make the center work. He recommended that a library subcommittee be formed that would include Council/Agency Member Tate as a member. He agreed to volunteer to serve on this subcommittee as he has served as the City's representative to the Library Authority in the past and has a background in construction. He felt that his experience may be helpful as a member of the library subcommittee.

Council/Agency Member Carr stated that he would support Mayor/Chairman Kennedy serving on the library subcommittee. He noted that it has been mentioned this evening about partnering closer with the School District. He felt that there may be great opportunities to do so. He volunteered to be a part of these conversations through the City-School Liaison Committee or through individual connections.

Mayor Pro Tempore/Vice-chair Chang stated that she would support a library on Monterey Road and Keystone Avenue.

Council/Agency Member Sellers agreed that situations and locations change with time. He encouraged the library subcommittee to hold direct meetings with the School District as well as the Library Commission sooner rather than later. He inquired whether the subcommittee could report back on some funding options for library development in January.

Council/Agency Member Carr inquired whether the City would be able to submit the same application for the round 3 library bond application or whether the City would need to make adjustments to the application.

Council/Agency Member Tate said that the City would be foolish to resubmit the same application. If the City can reduce the scope/dollar amount of its application, the City may be able to improve its placement in the library bond cycle.

Council/Agency Member Carr suggested that the City find ways, with a minimal amount of work, to improve its library application as a placeholder while the City moves forward with other opportunities.

**Action:**        *It was the consensus of the City Council to **appoint** Council/Agency Member Tate and Mayor/Chairman Kennedy to a library subcommittee.*

Mayor/Chairman Kennedy identified a list of expectations for the library subcommittee to consider: 1) look at a new scope for the library; 2) look at new location(s), and 3) investigate additional sources of funding.

Council/Agency Member Tate further suggested that the library subcommittee establish suggestions for a polling process to determine where the City's constituents are on these issues.

Mayor Pro Tempore/Vice-chair Chang recommended that the City determine what \$7-8 million would give the City (e.g., funds to be used for a library expansion).

Council/Agency Member Sellers felt that the City needs to start with a "facility needs" to make sure that it is meeting the long term community needs.

Council/Agency Member Tate indicated that the Library Commission would be meeting next Monday night and recommended that the library subcommittee attend this meeting and conduct a brainstorming session at said meeting.

Council/Agency Member Sellers indicated that the indoor recreation subcommittee would report back periodically; reporting back with phasing alternatives and sources of funding.

Council/Agency Member Carr felt that the City should consider other ways of providing these services outside of the footprint of what has been developed.

Mayor/Chairman Kennedy recommended that the indoor recreation subcommittee review sources of funding, included basic needs.

Mayor Pro Tempore Chang/Vice-chair Chang requested that thought be given to whether or not the Council/Agency would be looking at 95% - 100% cost recovery (e.g., is cost recovery an issue).

Mr. Dillmann informed the Council/Agency Board that the Library Commission has a subcommittee working with the Friends of the Library who established a foundation to raise money for the library. Funding is being targeted to provide Sunday hours and to address reduction of services in future years based on the State's economic crises.

Ms. Gregg said that part of the reason the library was so expensive was due to the fact that this site was the most expensive lot to deal with in terms of construction issues. Development of a library on this site results in moving a pump and the need to address site constraints. She felt that a lot of the cost issues can be reduced if the library was sited elsewhere.

## ***City Council and Redevelopment Agency Action***

### **CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

#### **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Government Code section 54956.9(a)

Parkin v. City of Morgan Hill

WCAB No. SJO Unassigned; Claim No. 992700500

### **OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:32 p.m.

### **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 7:07 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

### **SILENT INVOCATION**

In remembrance of John Moreno, former Chief of Police, City Manager, and Council Member.

### **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Chuck Dillmann, President of the Sister Cities Association and Library Commissioner, led the Pledge of Allegiance.

### **PROCLAMATIONS**

Mayor Kennedy presented a proclamation to Dina Campeau, Emergency Housing Consortium, proclaiming November 16-22, 2003 *Hunger and Homelessness Awareness Week*. Ms. Campeau invited everyone to the annual memorial service to honor the lives of those in Santa Clara County who have died while homeless, either in a shelter or the street. The memorial will take place in San Jose at the Bacardo Recreation Center in San Jose on November 19, 2003 at 11 a.m.

### **CITY COUNCIL REPORT**

Mayor Pro Tempore Chang reported on the dayworker center, indicating that the Dayworker Committee has been meeting weekly for approximately 6 weeks. She announced that the Committee has figured out a way to proceed with the dayworker center project. She stated that the dayworker center is to receive a partial grading permit and encroachment permit but that the Committee still needs everyone's support as the project is still short of money. She indicated that all Council members, the City Manager and his staff have made phone calls on the Committee's behalf for assistance and have provided needed assistance. She thanked everyone for their efforts.

### **CITY MANAGER REPORT**

City Manager Tewes reported on the monthly update on the extent of perchlorate contamination in city wells. He stated that the recent report indicates that the City's domestic wells on line are free of perchlorate at the detection limits set by the state. He said that the source of the perchlorate in the ground water in South County is the former Standard Fuse plant at Tennant and Railroad Avenues. A lot of testing has been conducted by the Olin Corporation, the responsible party, and the Water District. He said that the City has learned that the plume has extended as far south as nine miles. He indicated that the City has detected, from time to time, low levels of perchlorate in domestic wells to the north and east of the Standard Fuse site. Staff has fairly consistently urged the Water Board to order Olin to test to the north and east of the site. He stated that most recently, Olin indicated that they would conduct a survey of existing data to see whether the existing data might illustrate whether or not perchlorate was moving to the north and/or the east. He stated that City staff was disappointed with this because it did not include actual testing. He indicated that in a recent report submitted to the Water Board, Olin now acknowledges that their own test results from their site indicate that the ground water plume does extend to the south, north and east of the site. He stated that this is important to the City as this will allow the Water Board to evaluate their plans more carefully. If Olin is found to be responsible, it is the City's hope that all cost incurred for testing and efforts to provide treatment facilities on the domestic wells can be the responsibility of the Olin Corporation.

## **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a City Attorney's report to present this evening.

## **OTHER REPORTS**

None.

## **PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment

Randal Curtis indicated that at the last meeting the City Manager mentioned the lack of tax revenue. He wanted to remind the City Manager that it is his job to manage the City's finances. He indicated that the voters of Morgan Hill have also incurred loss in revenue due to the economy and yet still have to pay taxes. He suggested that the City Manager consider pay cuts and putting projects on hold, doing what the City can to stay out of citizens' pockets as they are also going through hard times. He would like the City Manager to manage the cost of the City and slow down some of the expenses, performing cost savings, layoffs or whatever is appropriate for the citizens and voters of Morgan Hill as everyone is hurting and no one should be exempt from cuts.

Mayor Kennedy indicated that the City Manager and City Attorney have both voluntarily elected not to accept a pay raise this year where this is not the case in many other jurisdictions. In addition, under the City Manager's direction, the City has cut expenses by 7% last year and another 6% this year. There is also a hiring freeze in place. Therefore, a lot of what Mr. Curtis is suggesting is being done.

Mayor Kennedy announced that last Saturday, at the Burnett Elementary School, the India Cultural Association of the Bay area held their Diwali new years festival of lights. He indicated that they have given each Council Member a coffee mug in recognition of this event. On the previous Saturday, the local India American group held another Diwali festival at the community playhouse. He said that this was a very warm and nice event.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Chang requested that items 4 and 5 be pulled from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2, 3, 6 -19, as follows:*

#### **2.        PERFORMANCE MEASURE UPDATE – FIRST QUARTER FY 2003-2004**

**Action:** ***Received** and **Filed** Report.*

3. **ACCEPTANCE OF PUBLIC IMPROVEMENTS AT THE END OF ADAMS COURT AND ALONG A PORTION OF COCHRANE ROAD (ADAMS COURTYARD BUSINESS PARK)**  
***Action:** 1) Adopted the Resolution No. 5730, Accepting the Public Improvements for Adams Courtyard Business Park; and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*
6. **APPROPRIATION OF FUNDS FOR NON-BUDGETED PERCHLORATE CONTAMINATION RELATED EXPENSES IN FISCAL YEAR 2003-2004**  
***Action:** Approved the Appropriation of \$359,358 From the Unappropriated Water Fund Balance (650) to Fund the On-going Expenses for Perchlorate Contamination.*
7. **COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR WATSONVILLE BRIDGE WIDENING**  
***Action:** 1) Adopted Resolution No. 5731, Supporting the Watsonville Bridge Widening Project as the City's 2005-2006 Hazardous Elimination Safety (HES) Project Candidate; and 2) Certified \$70,000 in Matching Funds will be Appropriated from the Unappropriated Traffic Impact Fund if Grant Application is Successful. City will Cover Costs Associated with Administration, Planning, Design and Inspection, Estimated at \$50,000, plus 10% of the Estimated Construction Cost (\$20,000).*
8. **MAIN AVENUE-UNION PACIFIC RAILROAD (UPRR) CROSSING SAFETY IMPROVEMENTS PROJECT – FIBER OPTIC CABLE RELOCATION AGREEMENT**  
***Action:** 1) Appropriated \$6,500 from the Unappropriated Traffic Impact Fee Fund for This Work; and 2) Authorized the City Manager to Execute a Relocation Agreement, with Costs in the Amount of \$6,090 with Qwest Communications Corporation (QCC) for the Main Avenue/UPRR Crossing Safety Improvements Project, Subject to Review by City Attorney.*
9. **APPROVAL OF ADDITIONAL PG&E FEES FOR AQUATICS CENTER**  
***Action:** Approved Payment of Additional Fees to PG&E for the Aquatics Center in the Amount of \$18,412.24 for a Total of \$210,004.98.*
10. **APPROVE PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY**  
***Action:** Approved Payment in the Amount of \$60,608.90 for Vegetation Abatement in Fiscal Year 2002-2003.*
11. **AWARD OF CONTRACT FOR SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE III 2003-2004 PROJECT**  
***Action:** 1) Awarded Contract to Monterey Peninsula Engineering, Inc. for the Construction of the Sidewalk, Curb and Gutter Removal and Replacement 2003-2004 Phase III in the Amount of \$65,140; and 2) Authorized Expenditure of Construction Contingency Funds Not to Exceed \$6,514.*

12. **EMERGENCY AUTHORIZATION FOR SEWER LINE REPAIR AT 2983 HOLIDAY COURT**  
*Action: 1) **Adopted** Resolution No. 5732, Declaring the Need for Emergency Expenditure for Repair Work to Damaged Sewer Line at 2983 Holiday Court; and 2) **Approved** Funding in the Amount of \$18,000 for This Emergency Work.*
13. **VOLUNTEER CENTER OF SILICON VALLEY AND CITY OF MORGAN HILL MEMORANDUM OF UNDERSTANDING (MOU)**  
*Action: **Authorized** the City Manager to Execute a Memorandum of Understanding (MOU) on Behalf of the City of Morgan Hill with the Volunteer Center of Silicon Valley to Support, in Conjunction with the Office of Emergency Services and other City staff, a Processing Center for Spontaneous Volunteers Responding to a Catastrophic Disaster in the Santa Clara Valley, within the City of Morgan Hill at a Site or Facility to be Determined.*
14. **MEDICAL RESERVE CORPS (MRC) CONTINUATION GRANT (FY-03) FROM THE OFFICE OF THE SURGEON GENERAL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
*Action: **Approved** and **Accepted** this Continuation Grant of \$50,000 for FY-03 for the Morgan Hill Medical Reserve Corps Operations, Training, and Equipment.*
15. **2003-2004 CITY WORKPLAN, FIRST QUARTER UPDATE**  
*Action: **Accepted** First Quarter Update of the 2003-2004 Workplan.*
16. **ADOPT ORDINANCE NO. 1639, NEW SERIES**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1639, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DRIVE AND SAN VICENTE COURT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067) (ZA-02-12: NINA LANE-CHEN).***
17. **ADOPT ORDINANCE NO. 1640, NEW SERIES**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1640, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE - CHEN).***
18. **ADOPT ORDINANCE NO. 1641, NEW SERIES, AS AMENDED**

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**Action:** ***Waived** the Reading, and **Adopted** Ordinance No. 1641, New Series, as Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING (ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ATTACHED HOUSING).****

**19. SPECIAL CITY COUNCIL MEETING MINUTES – TOUR OF AQUATICS CENTER CONSTRUCTION SITE ON OCTOBER 24, 2003.**

**Action:** ***Approved** the minutes as submitted.*

Mayor Kennedy noted that the recommended action for items 4 and 5 is to take no action which would thereby concur with the Planning Commission's decision. He stated that several Council Members have expressed a desire to hear these items. Therefore, he requested that these two items be agendized for Council discussion on December 3, 2003.

City Attorney Leichter indicated that the Appeals Code section speaks to the Council's ability to bring tentative maps up for review. Therefore, it would take a majority vote of the Council to agendize these items for Council review.

**4. SUBDIVISION, SD-02-11: DEWITT-MARQUEZ**

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Scheduled** a December 3, 2003 Hearing Regarding Approval of the Subdivision Map.*

**5. SUBDIVISION, SD-03-05: DEWITT-MARRAD GROUP**

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Scheduled** a December 3, 2003 Hearing Regarding Approval of the Subdivision Map.*

In response to Mayor Kennedy's inquiry relating to items 23 and 24 being continued to December 3 that also pertain to this same issue, Director of Community Development Bischoff indicated that these items have been advertised for public hearing. Therefore, it would be necessary to open the public hearings. He suggested that it would be an appropriate action to continue these items to December 3, 2003.

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

City Manager/Executive Director Tewes requested that item 22 be pulled from the Consent Calendar.

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**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 20 and 21 as follows:*

**20. FORMATION OF MORGAN HILL FINANCING AUTHORITY**

**Redevelopment Agency Board:**

**Action:** *1) Acting as Redevelopment Agency Board of Directors, **Adopted** Resolution No. MHRA-246, Approving a Joint Exercise of Powers Agreement between the Redevelopment Agency and the City of Morgan Hill.*

**City Council:**

**Action:** *2) Acting as City Council, **Adopted** Resolution No. 5729, Approving a Joint Exercise of Powers Agreement between the Redevelopment Agency and the City of Morgan Hill*

**21. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF OCTOBER 15, 2003.**

**Action:** ***Approved** the minutes as submitted.*

***Redevelopment Agency Action***

**CONSENT CALENDAR:**

**22. GROUND LEASE FOR THE MORGAN HILL COURTHOUSE**

Agency Counsel Leichter indicated that staff has been negotiating a ground lease for the County courthouse facility with the County of Santa Clara. She stated that they are under some deadlines in terms of their financing. She noted that the staff report before the Agency Board refers to the fact that if the ground lease is complete and further negotiations are not needed, staff would request approval of the ground lease. If not, staff would bring the lease back for Agency Board consideration on November 19. She stated that staff believes that negotiations are substantially complete. Staff is working on one item relating to the granting of permanent easements. However, staff believes that it has reached conceptual agreement with the County.

Director of Business Assistance and Housing Services Toy confirmed that there is one outstanding item. However, City staff and the County have agreed conceptually to this item and that the County just needs to revise the agreement to reflect this point.

Agency Counsel Leichter requested Agency Board approval of the ground lease for the Morgan Hill Court House with the following basic terms of the agreement: lease rate to be \$1 per year; the ground lease to have a 40-year term; the County is to operate the facility as a courthouse for the first 20-years and that for the remainder of the ground lease period, the County may operate a courthouse or County offices; incorporates language to allow for bond financing of the project; and that at the end of the lease, the property will be conveyed to the County. She stated that the City preferred that the ground lease exercise some control over the use of the property and ensure that it would be used for a courthouse or

court related facility. She indicated that most of the terms were agreed to previously by the Agency Board in the DDA and a terms agreement that was executed between the directors of the respective agencies. She indicated that staff could return with the ground lease on November 19, 2003 should the Council prefer seeing the entire lease before approving it.

**Action:**        *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board **Conceptually Approved** the Ground Lease; **Directing** Staff to Return with the Ground Lease on November 19, 2003.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **23.     DEVELOPMENT AGREEMENT DA-03-05: DEWITT-MARRAD GROUP**

City Manager Tewes indicated that items 23 and 24 are public hearing items on a development agreement and zoning relating to the DeWitt-Marquez tentative map application. He noted that earlier this evening, the Council indicated its intent to hold a public hearing on the subdivision aspect of the project on December 3, 2003. It was his belief that it would be the Council's intent to open the public hearing at the appropriate time and defer the development agreement and zoning related applications to December 3 as well.

Planning Manager Rowe presented the staff report. He commended that the Council open the public hearing and continue this item to December 3, 2003 in order to consider it along with the related subdivision.

Mayor Kennedy opened the public hearing.

Cindy Bunch, Price Drive, informed the Council that she was planning to address the Council on December 3. She stated that the entire neighborhood along Price Drive, Price Court and John Telfer do not want the proposed road to connect as a through street into the neighborhood. The residents do not mind it going through as an emergency vehicle access road. She indicated that this is an issue that the neighbors have been trying to work out with the Planning Commission since 1996. The Planning Commission has asked the residents to work with the developer and come up with a compromise, indicating that a compromise had been reached with a cul-de-sac that was approved. However, through the Planning Commission and Department of Public Works, the cul-de-sac was denied with no explanation. She emphasized that the residents do not want the road as a through public street.

No further comments were offered.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Continued** the public hearing to December 3, 2003.*

**24. ZONING AMENDMENT, ZA-02-16; DEVELOPMENT AGREEMENT AMENDMENT, DAA-02-09; DEWITT-MARQUEZ.**

Planning Manager Rowe presented the staff report, recommending that the City Council continue the public hearing to December 3, 2003 in order to hear this item with the tentative map that was called up earlier this evening by the City Council.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Continued** the Public Hearing to December 3, 2003.*

***City Council Action***

**OTHER BUSINESS:**

**25. UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) – Resolution No. 5733**

Director of Community Development Bischoff presented the staff report on a proposed amendment to and extension of the City's Redevelopment Development Control System (RDCS), Measure P. He indicated that at the Council's October 1 meeting, the Council considered a summary of proposed changes by staff and Council Member Tate, Chair of the Committee that drafted the amendments to the initiative. At the October 1 meeting, the Council requested sections of the initiative be modified (e.g., consistent use of the terms "allotments" versus "allocation"; the growth rate to the initiative would allow 1.9% growth, assuming a compound growth, or approximately 2.2%, should a simple straight line growth rate be used; allows 230-250 homes to be built per year; as drafted by the committee suggested only a clarification of the appeals process, clarifying that what is being appealed is the scoring of the project; inclusion of modified language as listed in attachment 3 presented to the Council which would give the Council additional appeal authority, should the Council wish to do so; and 18.78.130.d. amended to reference project scoring). He informed the Council that on the dias, is a sheet of paper that identifies several amendments: 1) referencing project scoring instead of allotment evaluation; and 2) an expanded appeal authority to be granted by the Council. He indicated that exhibits A (map showing the area designated as open space in the general plan) and B (map showing the core area being proposed to be included in the initiative) were inadvertently not included as part of the initiative.

Mayor Kennedy noted that the core area stops on Dunne Avenue at the railroad at the southern end shown on Exhibit B. He inquired as to the reason that the core was not extended further to the south.

Mr. Bischoff said that there was a lot of discussion about the core area by the Measure P Update Committee. He indicated that the initiative proposes to eliminate the east/west split because projects generally score lower on the west side as there is less land available for development on the west side. Therefore, those projects receiving allocations are a way from the core at the northern and southern end of the community. The Committee felt that it would be beneficial to eliminate the east/west split and did

not want to see sprawl development occurring throughout of the community, particularly seeing a lot of development on the east side of the freeway. The Committee included, within the initiative, a definition of the core area, drawing this area tightly around the downtown with a small extension to the south and north which generally follows the Monterey Road spine. Areas to the south were not included because the Committee wanted to focus development along the Monterey Road spine to the north and south of the downtown area. He informed the Council that also on the dias are two letters. The first letter is from the Downtown Association stating general support of the amendments, indicating that they wished that the amendments went further and that residential development be exempt within the downtown area. The second letter is from Matteoni Saxe and O'Laughlin, representing the Arcadia Development Company requesting that the Council continue this matter for two weeks to allow them additional time to put together their reasons why they believe that one amendment is warranted. The amendment would affect the Arcadia property that is located on the east side of Hill Road, north of Barrett Avenue. He indicated that Chris Taylor, the attorney who assisted the Committee in drafting the amendments to the initiative, was in attendance and available to answer questions the Council may have.

Mayor Kennedy stated that he knows an individual who owns property immediately across the Community and Cultural Center who is interested in a mixed use housing project on that site. He noted that the core area would exclude this property. He inquired whether it made sense to exclude this parcel from the core area.

Council Member Tate indicated that the update to Measure P recommends having a set aside for mixed use development that is independent from the downtown.

Council Member Carr said that in order to eliminate the east/west split, the Committee talked a lot about tighten up the core area in order to concentrate on infill development. He said that there was earlier discussion about tightening the core ever further. The Committee did not want to loose some of the opportunity sites along the Monterey Road spine.

Council Member Tate inquired how the appeal language was crafted that was included in attachment 3. He inquired whether this recommendation was based on the Council's previous meeting where it discussed the appeal process. He felt that there was a certain amount of vagueness and openness to the recommended language. He stated that he did not recall that the Council established the language at the last meeting.

Mr. Bischoff indicated that there was a lot of discussion at the Council meeting about appeals. He said that the minutes suggest that at least two council members expressed an interest in expanding the Council's ability to hear appeals to include appeals of scoring and of allocations. It was because of this discussion that staff drafted the supplemental appeal language for Council's review and consideration. He informed the Council that the language that would tighten up the appeal states that the Council could hear appeals but if the Council is going to modify scores or allocations, the Council would have to do so in a matter that is consistent with other parts of the initiative. Beyond this, staff spoke with outside counsel as to whether the appeal language should be even tighter and specify actual standards or identify an evaluation criterion. It was staff's belief that the Council does not want to make the language so tight that it does not afford the ability to respond to various circumstances. If the Council was to expand its

appeal authority, it would be appropriate to adopt some policy language after the initiative passes that would set forth the standards or criteria by which the Council would evaluate appeals.

Council Member Tate stated that the words “after appropriate notice” are confusing to him and that he did not understand the entire sequencing of what is being suggested as part of the appeal process. It suggests to him that at anytime before the competition commences, someone can come forward and ask the Council to jump in. He said that there is no identification of sequencing or notion of when things are to occur and that this is of concern to him.

City Manager Tewes stated that staff was not recommended that the Council incorporate attachment 3 as part of the initiative, clarifying that staff drafted the language relating to appeals for Council consideration as some members of the City Council expressed interest in the appeal process. He indicated that Mr. Bischoff is prepared to go into more detail about the sequences should the Council so direct.

City Attorney Leichter informed the Council that there are two resolutions before it. The first resolution calls for the municipal election to be held and placing an initiative on the ballot. The second resolution directs her to prepare the impartial analysis and sets priorities for filing the written arguments. The second resolution suggests that the Council appoint Council members to file the written arguments for or against the measure as it has done in the past. She indicated that staff is seeking direction to this point. In addition, staff has provided Council with suggested ballot language. Staff has other suggestions that have come from various sources should the Council wish to clarify or add more language regarding the intention of the Measure P update. She requested Council direction as to the appropriate ballot language to fill in the blanks on the two resolutions.

Mayor Kennedy opened the floor to public comment.

Ralph Lyle, speaking as a private citizen, indicated that he sent all Council members a letter that addressed some of his concerns. He stated that he had concerns with the Measure P update as it came out of the Committee as the update contained potential problems. He was eventually able to rationalize that there was more good than bad in the rationalizing process. However, when he saw the language and heard Council discussion at the last meeting to include the appeal of the allotment process, it swayed his position. He now views that there is more bad in the measure than there is good. He indicated that the Committee did not address this issue but dealt with the notion that the Planning Commission had not been following the language of Measure P. It was suggested, and was adopted by the Committee, that the allotment process varies somewhat from the very strict interpretation of the language contained in the prior measure. He stated that this was done primarily for ongoing projects. He felt that with these changes, there is too complete a transformation and change in philosophy from the prior Measures. He noted that the suggested appeal process modification was not approved by the Committee and stated that he could no longer support the Measure P update initiative.

Dick Oliver stated that at the last Council meeting he thought there was extensive discussion about the provisions of attachment 3. It was his specific understanding that there would not be an attempt to change Measure P to allow the Council to either change allotments or fuss with the allotment. He felt

that this was a consensus of the Council and a direction to staff. He indicated that he did not receive attachment 3 until this evening. He felt that it would be a mistake for the Council to amend the appeal process. He indicated that he has applied under Measure E and P since 1989. He has made appeals, received allotments, and has had competitions where he received no allotments. He has also appealed and not received allotments. He felt that the system has worked fairly well and stands for what is best for the community. Should the Council politicize the Measure P process, the Council would place itself in a situation where the planning commission would be of no use because every project will have to appeal with all appeals being heard new. The Council would not have the benefit of all the process that took place prior to the appeal hearings. He did not believe that there has been an abuse of discretion by the planning commission on the results received. He felt that the City would be stepping backwards in time should the Council hear appeals on every project at every Measure P competition. He strongly suggested that the Council not go down this road.

Rocke Garcia indicated that he was not on the Measure P update committee but concurred with many of the decisions that they made. He agreed with Mr. Oliver and Mr. Lyle that the Council would politicize Measure P by allowing the appeals to go per attachment 3. He has participated in Measure E and P as long as Mr. Oliver has and he guarantees that everyone who participates in Measure P will appeal, no matter their point ranking because the RDCS process will become politicized. It will take Council time and will be necessary for developers to protect what it has. He stated his disagreement with the elimination of the east-west split as it would create concentration of housing in one close area versus spreading development throughout the community. It was his belief that this would also result in one type of housing product.

Bradley Matteoni, Matteoni Saxe and O’Laughlin, informed the Council that she represents Arcadia Development who owns an 80-acre parcel zoned residential at the northeast corner of Hill Road and Barrett Avenue. She indicated that this property was added to the urban service area between March 1 and December 8, 1990. She stated that Mr. Hectman, from her law firm, sent the Council a letter requesting that the Council continue this matter for 1 week as her firm was only retained last week. As an alternative, she requested that the last sentence contained in the last paragraph of Section 2.f (page 344 and 345 of the agenda packet) be deleted that reads: “...~~Therefore, any land added to the urban service area between March 1, 1990 and the effective date of Measure P, December 8, 1990 and not considered infill, as defined above, the City shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990.~~” She indicated that Arcadia Development is the only property owner who came into the City’s urban service area between March 1 and December 8, 1990. Therefore, it is the only property owner who has property zoned residentially who is precluded from participating in the Measure P allotment process. As an alternative, she recommended that the language be changed to stipulate that any land added to the urban service area after the effective date of Measure P be excluded from the allotment process. She indicated that Arcadia is asking for a fair opportunity to participate in the Measure P allotment process and that they are not asking that more dwelling units be added or for preferential treatment.

City Attorney Leichter indicated that she had the opportunity to speak with Mr. Hectman this afternoon. She stated that she asked Mr. Hectman whether he had any legal basis for his assertion that this language should be stricken. Mr. Hectman responded that he has not yet had the opportunity to review the matter

in detail. She requested that Ms. Matteoni ask that Mr. Hectman put in writing the legal basis for the request to amend Section 2.f other than to simply request, based on fairness, to have the language stricken. Having this information in advance of the meeting will allow staff to be prepared to respond.

Randall Curtis indicated that the Measure P Update Committee decided to stand firm in retaining Section 2.f in Measure P. It was agreed that Arcadia already violated the spirit of proposition P and built more than the allowed units at the upper corner of the property. He stated that Arcadia's property was not the only property that was affected by Measure P. He said that it was the only property that went ahead and tried to violate the law and apply for allotments. He said that this provision was included in Measure P to keep people who knew about the proposition before it went into affect from applying ahead of time to beat the gun. He said that other property owners could have applied for allotments but that they followed the spirit of proposition P and did not apply. He felt that nothing but special favors have been granted to Arcadia. He did not believe that Arcadia requires an additional two weeks to respond. He noted that Arcadia already sued the City once and lost. If allowed to sue again, he felt that they would loose again. He indicated that he has circulated a petition signed by 100 individuals that want to have this language remain in Measure P. If deleted, there would be several hundred voters in opposition to the RDCS update where he would like to vote with the RDCS update. He indicated that Mr. Oliver represented Arcadia, noting that Mr. Oliver agreed to retain the language via a letter by Arcadia. He requested that the Council not approve special favors for Arcadia and not have individuals fighting against the RDCS for this one issue.

No further comments were offered.

Council Member Carr felt that the issue of the appeals process was an outstanding issue. He indicated that the appeal process was not something that the Measure P Update Committee took a look at changing. The Committee looked at things that would improve Measure P and not to change things that are working. He said that the Council may be in a different position from the Committee in terms of how the appeals should be handled. The way the draft appeal language is written is different from what the Committee envisioned in its final product. He felt that the Council should spend time discussing the appeal process and determine whether this is a road that it wants to take as the Council would be making a change from where the Committee was at the end of their work/charge.

Council Member Tate stated that the City had a great group that worked on the Measure P update. This was a Committee that represented every view point in the community. He noted that growth in the community has always been a topic of debate and differences of opinion. To come to a consensus as the group did meant that everyone in the group gave up certain things. He said that the Committee came together and were able to reach consensus, understanding that everyone did not get what they wanted. He did not believe that any Committee member could state that they stood solidly behind and in support of every issue, but that the total product was something that the entire Committee ended up being able to support. He said that he and Council Member Carr are defensive of the consensus that was built over a long period of time through lengthy Committee discussions. He could not support items that the Committee did not address that and are being considered at this point in time. He said that it was his recollection of what the Council discussed at the October meeting was an adjustment to the appeal process so that the Council can have appeals come before it earlier. He did not recollect that the Council

agreed to change allocations as opposed to points. He stated that the vagueness of the language being proposed does what Mr. Garcia and Mr. Oliver both pointed out; it politicizes the appeal process. He stated that his faith and support of the Planning Commission as this Council asks more of them than other cities ask of their planning commissions. The Council has asked that they administrate and oversee the entire Measure P process and felt that they do an extremely good job. Should the Council approve the proposed appeal language; the Council will be busy November through March every year as the Council would be wrapped up in the Measure P process. He did not believe that the Council would be able to participate in the appeal process unless it follows the process all the way through.

Mayor Pro Tempore Chang indicated that she did not participate in the appeal process this year because she resides adjacent to a project that was proposed for development. She requested that staff explain the appeal process.

Mr. Bischoff indicated that over the past 12-13 years, there have been 7-years of appeals made to the Council. In all but one of these years, the Council affirmed the decision made by the Planning Commission. This year, applicants felt that their projects were not properly scored and were entitled to additional points under certain categories. The Council evaluated the projects and looked at the score. The Council increased the score for one project, noting that it did not have an effect on the allocation.

Planning Manager Rowe clarified that the Council adjusted the point score of the Dempsey project, but that it did not change the standing of the next in line project.

Mayor Kennedy said that this year's appeal process, it appeared as though the Council had no authority on the appeal. The Council simply sent the appeals back to the Planning Commission.

Mr. Bischoff stated that the Council has the authority to hear appeals of scoring and has the ability to change the scoring of projects. He said that there is nothing in the initiative before the Council that would change this.

Mayor Kennedy indicated that a concern was expressed that a proposed appeal amendment would give the Council the authority to change the allotments. He said that as he looks at the language contained in Section 18.78.130(d), appeal procedures, the allotment evaluation is stricken. He said that the revision presented this evening states that "The Council may affirm or modify the project's scoring and its decision shall be final and conclusive."

Mr. Lyle said that the RDCS process is supposed to be a two step process: 1) scoring; and 2) the allotment process. He said that there were an unusual set of circumstances this past year where the two processes rapped together, causing some of the problem. He clarified that the normal process would be that applications are reviewed by the Planning Commission and scored. It goes to the City Council for review with the Council making the appropriate changes. The Council refers the appeals back to staff or the Planning Commission for additional evaluation. The scores are then adjusted and the allotments are made. He stated that the allotments, once awarded, are not appealable. The problem encountered this year was the fact that the two processes got rolled into one process. The Planning Commission made a provisional award of allotments on the assumption that the ranking of projects would not change due to

the fact that the process was delayed. Therefore, the Planning Commission did not in fact award the allotments. However, in the future, the two steps should be taken. He said that one thing that this initiative does is reduces the appeal period from 30 days to 15 days so that the process does not get extended out as much.

Mayor Pro Tempore Chang stated that she sometimes has problems with the Planning Commission granting 2<sup>nd</sup> and/or 3<sup>rd</sup> year allotments.

Mr. Lyle said that under the proposed measure, the Council will have the right to say yes or no to the third year allotment. The proposed appeal language before the Council states that the Planning Commission awards the allotments but that the Council still controls the 2<sup>nd</sup> and 3<sup>rd</sup> year allocations.

Council Member Carr noted that each year, a Measure P subcommittee is established to look at ways to improve the Measure P process. The Council then adopts the standards of a particular competition and that it has the ability to establish set asides every year. He said that when the Council talks about these, the Council needs to place a greater emphasis on this so that the Council sets up the ground work for the competition in advance. Therefore, everyone will understand the ground rules in advance. This would allow everyone to play by the same ground rules all the way through the process. He felt that a greater emphasis should be placed on this and that the Council needs to be more involved at the front end. He felt that in past years, the Council has given up its ability to be involved in the beginning of the process. He felt that the Council needs to be more involved so that there is less opportunity for problems at the back end of the process.

Mr. Lyle said that the Council needs to provide guidance to the Planning Commission on what it wants it to do with set asides. The Council needs to be proactive for the set asides as the Council has the ultimate say on these.

Council Member Sellers felt that the latitude at the front end would help as the Council is expanding the different types of housing with set asides for projects that may be desirable but may not be attainable under Measure P. He stated that he would like the Council to state that there will be a designated number of set asides for a certain type of project at the front end of the process. He felt that the Council needs to support the consensus of the Committee but that Council members are still obligated, as elected officials, to vote their conscience. He did not see any reason to go against the consensus of the Committee provided that the Council has the latitude for set asides as it appears that this was built in at the front end of the process. This would allow the Council to have input in the process without politicizing it at the back end and extending the process out.

Council Member Tate noted that every year, the Planning Commission and developers get together and look at the criteria, returning to the Council with recommended updates. The Council receives a staff report on where the City will be heading in the next competition. He felt that the Council needs to be included in the process to make sure that the Council walks through all of the set asides and other issues, carefully reviewing the criteria updates. He recommended a process approach be taken every year.

Council Member Carr suggested that the Council find a way to start this process earlier in the cycle of the competition so that when the City ends up with changes to the criteria, it is done at an early point. This will allow individuals who are interested in participating in the competition to understand the criteria and would have a significant amount of time to work with criteria as they develop their proposals. He said that there have been complaints that the length of the process generates old products. If the Council can provide enough opportunity to get the criteria to individuals, developers would have more time to build creativity into their projects.

Mayor Pro Tempore Chang felt that the Council should have the right to have the final say in terms of distribution of allotments. The Council should be allowed to look at the housing mix and state whether the Planning Commission's decision was right or wrong.

Council Member Tate indicated that he was involved in the drafting of Measure P as was Mr. Lyle because they felt that the Council should not have the final say on the distribution of allotments. It should be a process where the Council gets involved in the points and that the allocations would be distributed based on how the process dictates.

Council Member Sellers felt that based on the discussions this evening, the Council has the ultimate say. Next March, the voters will have the ultimate say on how the appeal process will be set up. However, if the Council has the structure in place it, can identify the criteria to be established in any given year at the front end. He agreed that the Council should be more involved in the front end of the process and felt that this update would encourage the Council to do so with the set asides.

Mayor Kennedy inquired as to the process the Council wants to follow to incorporate any changes that have come out of the public comments presented this evening, particularly the issue of allotments and the issue raised by Ms. Matteoni regarding the Barrett-Hill property.

Council Member Tate noted that the City has been under the Measure P update review process for well over 1½ years. He did not understand why all of a sudden Arcadia is asking for a delay when they have had more than 1 ½ years to be involved and provide their input in the Measure P update process. He did not want to see Council action delayed because of this. He did not believe that the suggested changes as listed in attachment 3 were required or needed. Should the Council concur, he felt that the Council could move forward this evening.

Council Member Sellers said that whenever a new issue is raised at the last minute and the Council has the opportunity to take another look at the issue, the Council takes the opportunity to delay its consideration of the issue. He inquired whether the Council was interested in delaying actions for two weeks for the one item.

City Attorney Leichter said that what she heard Ms. Matteoni raise this evening and what Mr. Hectman raised in his letter is that they are making their argument on the grounds of fairness as Arcadia was the only property affected by the initiative. She indicated that she has not seen or heard any legal grounds that would preclude the Council from moving forward this evening. However, should legal grounds be produced in the next two weeks, staff can bring them back to the Council.

Mr. Bischoff said that should the Council be interested in whatever legal arguments the Arcadia representative may have, staff would recommend that the Council defer action for two weeks.

Council Member Carr stated that he sat through all of the Committee meetings and that the Committee went round and around on this issue. He said that this is not the first time that he has heard this particular issue.

Mayor Pro Tempore Chang inquired what would happen to the process should Arcadia raise a valid legal argument.

City Attorney Leichter responded that it would complicate the process. If the Council anticipates legal arguments from Arcadia that it wishes to consider, she recommended that the Council defer the matter for two weeks. The Council can give tentative indication of the direction it plans to take this evening.

Mayor Kennedy felt that it was important that the City receive broad community support for the amendment to Measure P and that it move forward. He stated that he was open to accepting some of the suggestions that have been made, particularly relating to the scoring and the appeal process as long as the Council has the ability to not repeat the same problem experienced with appeals this year. He would be open to going back to the original language that the Committee approved. He stated that he would favor given the attorneys and the City its best shot at getting voter approval of the RDCS update, taking additional time to have the attorneys present their case to minimize the risk of lawsuits and disruption of the process. He stated that he would support continuing the action for the time recommended. He agreed to provide a conditional approval based on final resolution of the Arcadia issue.

Mr. Bischoff said that he hears the Council stating its intent to approve the initiative as included in the packet this evening, without attachment 3. However, the formal action to be taken this evening would be to continue the matter for two weeks.

City Attorney Leichter requested that the Council direct the attorneys for Arcadia to submit any legal arguments a week from tomorrow. She stated that it is difficult for staff to have adequate time to respond when it receives letters a day before the hearing. She also requested Council direction on the ballot language it would like to include.

Ms. Matteoni indicated that Ms. Leichter's request was doable.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5733, Approving the Negative Declaration.*

**Action:**        *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council, on a 4-1 vote with Council Member Tate voting no, **Continued** actions 4, 5 and 6 to November 19, 2003.*

Council Member Sellers felt that overall the ballot language was sound as it makes sense to consider changing downtown development. He said that the initiative is not specifically about the downtown as there are other things that the City would like to do that are adjacent to the downtown or located in other areas. He did not believe that the word “centric” in the ballot language was the right one to use. He noted that the second bullet point uses the term “sustainable.” He felt that “a more sustainable transit oriented development” might be closer to the language that should be included as this would achieve the goal, states the intent, and would meet with greatest voter approval. He did not believe that “discouraging sprawl” needs to be mentioned as it is implied. He felt that it would be helpful to include a preamble statement/history of the residential development control system.

Council Member Tate stated that he liked Council Member Sellers suggestion of a “sustainable transit oriented development.” He indicated that he was trying to avoid the term “smart growth” but that this is what the Council really means.

Mayor Kennedy stated his support of the inclusion of a preamble.

City Attorney Leichter said that it was her understanding that staff is to change “downtown development” to a “sustainable transient oriented development” and the inclusion of a preamble statement.

Mayor Pro Tempore Chang inquired whether the initiative should include the population ceiling of 48,000. In reading the initiative, it does not give her the sense that the City is controlling growth but that it is increasing the ceiling base. She recommended that instead of using the term “increase” that it be stated “to keep the population ceiling at 48,000.”

Mr. Bischoff said that the 48,000 is the number identified in the general plan. He said that language was intended to be consistent with the general plan.

Council Member Tate noted that the initiative states “...that for the year 2020 consistent with the 2001 general plan.” He agreed with Mayor Pro Tempore Chang’s comment but felt that this was the basis for this initiative. He concurred with amending the language to state “establishing the population ceiling of 48,000.”

Mr. Bischoff indicated that the Council could add language that suggests that this is a rate of growth that is consistent with Measure P; conveying that this is not a growth rate that is any greater, and is in fact somewhat less than envisioned by Measure P.

Mayor Kennedy did not believe that there is a way to get around the 48,000 number. He noted that staff would return in two weeks with specific language.

## **26. APPEAL APPLICATION, AP-03-06: JARVIS-ANRITSU.**

Planning Manager Rowe presented the staff report. He recommended that this item be continued to November 19 as the appeal on the conditional use permit requires a notice of public hearing.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr inquired whether the appellant were agreeable to the continuance as they informed him earlier this week that they were not.

Mr. Rowe indicated that the applicant, Four Square Church, would like the matter to be delayed until such time that it can be considered along with the second appeal application filed by Venture Corporation, appealing the question of whether the use permit should have been granted. He said that Anritsu Corporation filed the appeal on the condition that affects their property that requires the recording of an access and parking agreement. Anritsu was not questioning the basic issue of whether or not the use permit should have been granted but one portion of the use permit that relates to a specific condition that would impact their property.

City Attorney Leichter indicated that it was her belief that Venture Corporation is requesting that their appeal be heard on December 3 as their attorney is not able to attend the November 19 meeting.

Mr. Rowe informed the Council that staff has noticed this appeal hearing for November 19. Should the Council wish to consider this matter along with the more fundamental appeal question of the use permit itself, staff would recommend that this appeal be continued from November 19 to December 3.

Council Member Tate stated that should the Council consider the appeals separately, the Council would be piecemealing the appeal process and not hearing the whole story, spending more time than it needs to in the appeal process.

Council Member Carr said that Anritsu representatives reached out to him earlier this week, indicating that they did not want to continue this item and requested that their appeal be heard this evening. He noted that the Anritsu representatives were not in attendance this evening.

City Manager Tewes indicated that staff advised the applicant that the appeal hearing was not properly noticed. Notwithstanding their wishes, the appeal could not be heard this evening in any event.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Continued** this item to November 19, 2003.*

**27.    HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 60 AND 70 BISCEGLIA AVENUE**

Director of Public Works Ashcraft presented the staff report. He informed the Council that the property owner would pay in lieu fees instead of undergrounding the utilities at this time.

Mayor Kennedy opened the floor to public comment. No comments were offered.

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**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Granted Exemption** to the Requirement to Underground Utilities with Payment in Lieu Fees for the Proposed Development at 60 and 70 Bisceglia Avenue.*

**28.      HEARING FOR EXEMPTION TO UNDERGROUNDING OF UTILITIES – 16720 MONTEREY ROAD**

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Granted Exemption** to the Requirement to Underground Utilities with Payment in Lieu Fees for the Proposed Development at 16270 Monterey Road.*

**29.      APPROVAL OF COUNCIL POLICY GOVERNING EX PARTE CONTACTS**

City Attorney Leichter presented the staff report, indicating that many agencies have policies governing ex parte contacts between officials and applicants/developers who have matters pending before the official. She indicated that a policy is being suggested because staff has noticed that a number of applicants have been repeatedly requesting meetings with Council members, lobbying Council members for serving interests. The policy would govern these contacts so that they are regulated and that the due process rights of the applicants and others are not violated. She indicated that the policy provides a definition of when the policy would apply (e.g., when there is a quasi judicial matter pending before the Council or a subordinate agency). The policy states that the Council may discuss with any member of the public or listen to discussions about the facts on any matter that is pending before the Council if the guidelines are followed. She stated that discussions and the content of the discussions germane to the Council's decision are to be disclosed before public comment is taken at the public hearing on the matter. She indicated that the policy also addresses the issue of attendance at other subordinate bodies such as the planning commission who are hearing matters that may come before the Council. Council Members can attend such meetings but that Council members should not participate in such meetings because the matter will eventually be brought to the Council. The policy also states that the Council can visit sites and properties that are the subject of matters coming before the Council as long as this fact is disclosed and is germane to the decision making process for the record at the hearing. She indicated that the Planning Commission has been good about routinely divulging ex parte contacts where each member states that they met with individuals or visited the site, disclosing their observations for the record. She said that the Council recently adopted a policy governing public hearing and that it could be amended to include a step for divulging ex parte contacts before the Council receives public testimony.

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Mayor Kennedy stated that it would be helpful if staff added a statement on the agenda packet to remind the Council to divulge ex parte contacts for public hearings or quasi judicial actions that come before the Council.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** City Council Policy No. 03-02 Regarding Ex Parte Contacts.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:06 p.m.

#### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**